

**TOWN OF FOUNTAIN HILLS  
MINUTES OF THE EXECUTIVE AND REGULAR SESSIONS OF THE  
FOUNTAIN HILLS TOWN COUNCIL  
MARCH 17, 2016**

**EXECUTIVE SESSION**

\* **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Kavanagh called the Executive Session to order at 5:04 p.m. in the Fountain Hills Town Hall Fountain Conference Room - 2nd Floor.

**AGENDA ITEM #1 - ROLL CALL AND VOTE TO GO INTO EXECUTIVE SESSION, PURSUANT TO : (1) A.R.S. § 38-431.03(A)(3), DISCUSSION OR CONSULTATION FOR LEGAL ADVICE WITH THE ATTORNEY OR ATTORNEYS OF THE PUBLIC BODY, AND (2) A.R.S. § 38-431.03(A)(4), DISCUSSION OR CONSULTATION WITH THE ATTORNEYS OF THE PUBLIC BODY IN ORDER TO CONSIDER ITS POSITION AND INSTRUCT ITS ATTORNEYS REGARDING THE PUBLIC BODY'S POSITION REGARDING CONTRACTS THAT ARE THE SUBJECT OF NEGOTIATIONS, IN PENDING OR CONTEMPLATED LITIGATION OR IN SETTLEMENT DISCUSSIONS CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION, (i) THE THEATER LEASE, AND (ii) THE MORNINGSTAR PROJECT).**

Present for roll call were the following members of the Town Council: Mayor Linda Kavanagh, Vice Mayor Henry Leger, Councilmember Dennis Brown, Councilmember Cecil Yates, Councilmember Cassie Hansen, and Councilmember Alan Magazine.

Councilmember Nick DePorter attended telephonically.

Town Manager Grady E. Miller, Town Attorney Andrew McGuire, and Town Clerk Bevelyn Bender were also present.

Councilmember Yates **MOVED** to go into Executive Session at 5:04 p.m. and Councilmember Magazine **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0), with those in attendance.

**AGENDA ITEM #2 - ADJOURNMENT.**

The Mayor adjourned the Executive Session without objection at 6:25 p.m.

**REGULAR SESSION**

\* **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Kavanagh called the meeting to order at 6:35 p.m. in the Fountain Hills Town Hall Council Chambers.

\* **INVOCATION** - Julie Orwin, President of Congregation Beth Hagivot.

\* **ROLL CALL** - Present for roll call were the following members of the Town Council: Mayor Linda Kavanagh, Vice Mayor Henry Leger, Councilmember Alan Magazine, Councilmember Cecil Yates, Councilmember Cassie Hansen, and Councilmember Dennis Brown.

Councilmember Nick DePorter attended by telephonically.

Town Manager Grady E. Miller, Town Attorney Andrew McGuire and Town Clerk Bevelyn Bender were also present.

Mayor Kavanagh read a press release regarding a rally scheduled to be held in Fountain Park on Saturday, March 19, 2016, by presidential candidate Donald J. Trump. The press release included information on available parking areas, ID requirements and items not allowed into the event. She noted that further information could be found at [www.donaldjtrump.com](http://www.donaldjtrump.com).

**\* MAYOR'S REPORT**

**i) Mayor Kavanagh may review recent events attended relating to Economic Development**

None.

**ii) UPDATE BY FOUNTAIN HILLS ROTARY BOARDMEMBER BILL PAPE REGARDING THE ROTARY MUSICAL PLAYGROUND.**

Fountain Hills Rotary Boardmember Bill Pape utilized a PowerPoint presentation (available on-line and in the office of the Town Clerk) and stated that with the cooperative effort between the Four Peaks Rotary Club, Fountain Hills Rotary Club and the Fountain Hills Cultural & Civic Association Greening of Downtown, they decided that the playground would be named the "Rotary Community Musical Park". Mr. Pape noted that the plan had increased the number of instruments from 12 to 14 and they had made a configuration change increasing the diameter of the circle to 24' with off-sets. Mr. Pape asked for Council's approval for the addition of shade sails and possible video surveillance to the plan. Mr. Pape explained the new shade sails would match the current sails in the park and expressed his willingness to with the Director of Community Services Mark Mayer on the plan. He discussed their fundraising activities and asked for Council's approval to investigate the addition of shade sails to the plan.

Councilmember Magazine expressed his excitement on their initiative for the Town's young people and expressed support for the proposed shade sails. Councilmember Magazine remarked that at the last meeting he suggested adding benches. Mr. Papa answered that Mr. Mayer told him there were potential people who would like to sponsor benches and added he would be working with Mr. Mayer on that project. Councilmember Magazine asked Mr. Papa for a total cost for the construction of the playground and Mr. Pape answered a minimum of \$70,000.00 and up to \$85,000.00 depending on what was decided in the plan.

Councilmember Yates complimented Mr. Pape on an excellent job and stated everyone was thrilled with the project and asked staff how Council could address Mr. Papa's request for Council approval. Mr. Miller answered that a consensus from the Council was noted, Mr. Pape could move forward. Mayor Kavanagh expressed that the group was doing a great job.

**iii) UPDATE BY MCSO CAPTAIN DAVID LETOURNEAU REGARDING TRUCK TRAFFIC ENFORCEMENT IN THE TOWN OF FOUNTAIN HILLS.**

Mayor Kavanagh commented that Captain Letourneau's update would address residents' concerns received by phone and emails.

Captain Letourneau spoke to the problems created by contractor's trucks moving dirt from Adero Canyon and Firerock. He stated that Adero Canyon had a mechanic on site to inspect their trucks, but Firerock did not and they seemed to be more of a problem by contracting their drivers. The Firerock contractor was trying to remedy some of the problems by paying drivers by the hour instead of the load but there seemed to be an issue with the completion of safety checks on the drivers and trucks before leaving the site. Captain Letourneau brought up the accident in front of the high school involving two trucks and a brake issue. Captain Letourneau reported that MCSO did not have a truck inspector in Town but he had recently requested a truck inspector with special training to perform inspections. He stated that the truck inspector had recently pulled seven trucks out of service for equipment violations and wrote 33 tickets within a two week period with three trucks being towed. Mayor Kavanagh asked what routes were the trucks taking and Captain Letourneau answered Firerock to Shea Boulevard to Palisades Boulevard to Fountain Hills Boulevard then north out of Town.

Captain Letourneau pointed out that a limited amount of dust was found on the roads and the weight of the loads did not seem to be an issue. Mr. Miller explained the trucks were issued regulated hauling hours and the contractor's have

been cooperative in this request. He added that the contractors also understood that any dirt spillage from their trucks had to be cleaned up by the contractor involved. Captain Letourneau noted that Firerock had a 1-1/2 week break in hauling and he would be speaking with the contractor about the required truck inspections and the need for a mechanic to be on site.

Mayor Kavanagh expressed her concerns regarding the brake violations since the trucks route goes up and down hills. She acknowledges the Captain's operation and asked what additional action could be taken by the Town if the contractors did not comply. Mr. Miller reviewed the Town's concerns with the two contractors and noted that one dirt hauling project would be completed the last of April and the other the end of June. Mayor Kavanagh pointed out that the main issue seemed to be Firerock and asked if the Town could stop those trucks from going through Town if continued violations occurred. Mr. Miller stated that was a legal issue for the Town Attorney. Mr. McGuire answered he did not know if the Town could deny access to McDowell Mountain Road after the trucks left Fountain Hills. He explained that the Town had restrictions in place through the permitting process and that more research would have to be done to see what action legally could be taken by the Town. Mayor Kavanagh said she would like that option and requested that the contractors be made aware of the Town's consideration for legal action. Captain Letourneau stated another option would be to arrange for ADOT or DPS to have one of their inspector's placed at the job site to inspect the trucks. Mayor Kavanagh agreed and encouraged the Captain to follow-up. Councilmember DePorter supported the suggestion pointed out the number of ADOT trucks he had seen located between the Beeline Highway and the 202 highway that were apparently inspecting trucks. Councilmember Yates questioned the possible expense to the Captain's budget if ADOT or DPS inspectors were brought in to Town. Mr. Miller stated he would impress on the contractor's that they must take more responsibility and be accountable. Mayor Kavanagh asked for action to be taken and requested Captain Letourneau to report back to the Council.

### **CALL TO THE PUBLIC**

Robert Rican, a Fountain Hills resident, presented Council with a petition containing 200 signatures. He explained residents were in favor of lighting the path around the lake, but opposed the shining of the lights in the eyes of walkers or homes located around the lake. The petition called for the Mayor and Council to demand the company hired to design and install the path lights be held responsible for replacing them with full cut-off fixtures that lit the path only without further cost to the Town. He added they were asking only for what the Town's tax dollars paid for and was everyone was promised.

Donna Brinkmeyer, a Fountain Hills resident, stated she and Ted Blank had the opportunity to meet with Town Manager Grady Miller and Community Services Director Mark Mayer to discuss their concerns with the path lighting. She stated her appreciation for the opportunity to talk with them and looked forward to working with the Town closely to address park path lighting concerns. Ms. Brinkmeyer added that people overwhelmingly desired fully shielded lights with no up-lighting or glare. She added the Town needed to rectify the problem and urged the Council to insist that the company hired to design the park lighting be held responsible for replacing the bollards with full cutoff fixtures and without additional cost to the Town.

Mayor Kavanagh explained that the Council had listened; however they could not respond to their comments but assured them that Mr. Miller and Mr. Mayer was looking into the matter.

### **CONSENT AGENDA**

#### **AGENDA ITEM #1 - CONSIDERATION OF APPROVING MEETING MINUTES FROM MARCH 3, 2016.**

#### **AGENDA ITEM #2 - CONSIDERATION OF RE-APPOINTING ROBERT MELTON AS THE PRESIDING JUDGE FOR A FOUR-YEAR TERM AND APPROVING THE PROFESSIONAL SERVICES AND EMPLOYMENT AGREEMENT.**

#### **AGENDA ITEM #3 - CONSIDERATION OF AUTHORIZING THE EXPENDITURE OF \$8,000 TO REMOVE TWO EXISTING DISC GOLF TEE PADS AND INSTALL THREE NEW ONES TO COMPLETE THE DISC GOLF COURSE WITH FUNDS TO COME FROM THE FOUNTAIN PARK IMPROVEMENTS - PHASE VI CAPITAL PROJECT FUND FOR PROJECT'S DESIGN FEES (\$7,000.0) AND FROM THE CIP CONTINGENCY (\$1,000.00).**

**AGENDA ITEM #4 – CONSIDERATION OF (I) THE FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF FOUNTAIN HILLS AND BROWN & ASSOCIATES CERTIFIED INSPECTION SERVICES, INC. (CONTRACT C2016-110) FOR PLAN REVIEW, INSPECTION AND BUILDING OFFICIAL SERVICES, IN AN AMOUNT NOT TO EXCEED \$40,000.00; AND (II) THE BUDGET TRANSFER IN THE AMOUNT OF \$24,000.00 FROM THE TOWN MANAGER'S CONTINGENCY TO DEVELOPMENT SERVICES RELATING TO THE COST OF PLAN REVIEW, INSPECTION AND BUILDING OFFICIAL SERVICES.**

**AGENDA ITEM #5 – CONSIDERATION OF A FINAL REPLAT FOR A LOT LINE ADJUSTMENT BETWEEN 15477 E. TELEGRAPH DRIVE AND 15481 E. TELEGRAPH DRIVE, AKA PLAT 604C, BLOCK 9, LOTS 3 AND 4. CASE #2016-01**

**AGENDA ITEM #6 – CONSIDERATION OF (I) THE FINAL PLAT ENTITLED “REPLAT OF PLAT 302, BLOCK 5, LOTS 1 & 2, AND PARCEL A”, THAT COMBINES LOTS 1, 2 AND A PORTION OF PARCEL A INTO A NEW LOT “1A”, AND (II) THE BUDGET TRANSFER IN THE AMOUNT OF \$7,800.00 FROM THE TOWN MANAGER'S CONTINGENCY, TO DEVELOPMENT SERVICES, RELATING TO THE COST OF THE THEATER REPLATS.**

Councilmember Magazine **MOVED** to approve the Consent Agenda as listed and Councilmember Yates **SECONDED** the motion.

A roll call vote was taken with the following results:

Mayor Linda Kavanagh	Aye
Councilmember Nick DePorter	Aye
Councilmember Dennis Brown	Aye
Councilmember Cecil Yates	Aye
Councilmember Cassie Hansen	Aye
Councilmember Alan Magazine	Aye
Vice Mayor Henry Leger	Aye

The motion **CARRIED UNANIMOUSLY** (7-0).

### **REGULAR AGENDA**

**AGENDA ITEM #7 - CONSIDERATION OF A CERTIFICATE OF MODIFICATION TO EN LLC REGARDING EAGLES NEST PARCEL 11, LOT 245; AND AUTHORIZING ITS SIGNATURE.**

Town Attorney McGuire explained this request was a clean-up item related to the settlement agreement between the Town of Fountain Hills and MCO Properties, Inc., EN, LLC and Adero Canyon, LLC. He added this was for the final exchange of property located in the Eagles Nest swapped for the Fire Station #2 location. Mr. McGuire noted this was a change to the cover sheet on the plat and was a technical correction to make sure the change was memorialized in the recording document as noted in the settlement agreement.

Mayor Kavanagh asked if there were any questions or discussion from Council and there were none. No requests to speak were received.

Councilmember Yates **MOVED** to approve the Certificate of Modification to EN, LLC regarding Eagles Nest Parcel 11, Lot 245; and authorizing its signature. Councilmember Brown **SECONDED** the motion. The motion **CARRIED UNANIMOUSLY** (7-0).

**AGENDA ITEM #8 – DISCUSSION WITH POSSIBLE DIRECTION TO STAFF RELATING TO ANY ITEM INCLUDED IN THE LEAGUE OF ARIZONA CITIES AND TOWNS WEEKLY LEGISLATIVE BULLETIN OR RELATING TO ANY ACTION PROPOSED OR PENDING BEFORE THE STATE LEGISLATURE.**

Mr. Miller stated that Councilmember Magazine wished to speak on SB 1487 and noted that today the Governor had signed the bill.

Councilmember Magazine said he wished to comment on this bill that would reduce cities and Town's state shared revenues and allowing any lawmaker to direct the Attorney General to investigate any cities or counties passing legislation that would be in conflict with state law or its constitution. He added that if a conflict was considered found by the Attorney General the State Treasurer would withhold state shared revenues until the violators came into compliance. Councilmember Magazine stated this bill placed a strangle hold on local governments and their citizens and added this legislation was an over reach by our Legislative Government and outrageous.

#### **AGENDA ITEM #9 - COUNCIL DISCUSSION/DIRECTION TO THE TOWN MANAGER**

Items listed below are related only to the property or (i) placing such items on a future agenda for action or (ii) directing staff to conduct further research and report back to the Council.

- (i) None.

#### **AGENDA ITEM #10 - SUMMARY OF COUNCIL REQUESTS AND REPORT ON RECENT ACTIVITIES BY THE MAYOR, INDIVIDUAL COUNCILMEMBERS, AND THE TOWN MANAGER.**

Mayor Kavanagh indicated that she was presented the two-hundred-fiftieth bag of food from "Food for Kidz" by Pastor Adele of the New Journey Lutheran Church; the last six years the group had filled bags and distributed them to various services such as the Extended Hands Food Bank and Veterans' organizations.

Mayor Kavanagh stated that on behalf of the Town she had welcomed participates in the "Hike for the Homeless" at McDowell Mountain Park, which was held every year. She explained the organization helped the homeless find jobs and helped them off the streets to give them a second chance.

Mayor Kavanagh attended the Anti Drug and Alcohol School Coalition meeting and noted a very successful essay and poster contest that included a luncheon and awards given to the winners. They also participated in the Arizona Youth Survey involving high school and middle school students in grades 8, 10 and 12, given every two years by the Arizona Criminal Justice Commission examining substance abuse, bullying and other issues and then compare the results with previous years as well as the state and national averages.

Mayor Kavanagh stated she had also attended the very successful "Kite Festival" in Fountain Park and added the Town was honored to have the Consul General from Pakistan, Abdul Jabbar Memon attending the festival along with his Consulate who had a booth displaying traditional Pakistani items.

The Mayor provided a listing of other Activities she had attended: the Grand Canyon Winery ribbon cutting; the Noon Rotary's Annual Fire and Police Awards, the Mayor's East Valley Prayer Breakfast, visited the site of the Town's new trailhead, and had speaking engagements before the Noon Rotary and the Sunset Kiwanis.

Mayor Kavanagh stated she had worn green this evening and had welcomed the public to the Town's "St. Patrick's Day" festival. She reminded everyone that on March 26<sup>th</sup> at 9:00 a.m. at Golden Eagle Park the ball fields would be filled with thousand of eggs, and that "Happy Bunny" would be in attendance and would be available for pictures with the kids. She pointed out that the event was free because of the sponsorship by the Town, The Goyena Team and Republic Services.

#### **AGENDA ITEM #11 - ADJOURNMENT**

Councilmember Yates **MOVED** to adjourn the meeting and Councilmember Brown **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0). The Regular Session adjourned at 7:17 p.m.

**TOWN OF FOUNTAIN HILLS**

By \_\_\_\_\_  
Linda M. Kavanagh, Mayor

ATTEST AND  
PREPARED BY:

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Executive Session, held in the Fountain Conference Room – 2<sup>nd</sup> Floor and Regular Session held by the Town Council of Fountain Hills in the Town Hall Council Chambers on the 17<sup>th</sup> day of March, 2016. I further certify that the meeting was duly called and that a quorum was present.

DATED this 7<sup>th</sup> day of April, 2016.

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk